

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Richard A. Pineau, *et al.*** Confirmation No.: **8266**
Serial No.: **09/842,754** Group Art Unit: **2153**
Filing Date: **April 26, 2001** Examiner: **Sean M. Reilly**
For: **Method and Apparatus for Remote Processing and Sharing of Digital Images**

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Sir:

APPELLANTS' BRIEF PURSUANT TO 37 C.F.R. § 41.37

This *corrected* Appeal Brief is submitted in response to the Notification of Non-Compliant Appeal Brief mailed June 28, 2007 in the above-identified application. This Appeal Brief is being filed in support of Appellants' appeal from the rejections of claims 1 to 15, 19, and 20 dated June 30, 2005. A Notice of Appeal was timely filed on September 30, 2005.

1. REAL PARTY IN INTEREST

The real party in interest is Senshin Capital, LLC, a limited liability company of the state of Delaware, with a registered address of 2711 Centerville Road, Suite 400,

DOCKET NO.: Polaroid 8410 (IVBA-0328)

PATENT

Wilmington, Delaware 19808 USA and principal office at Temasek Boulevard, #44-01
Suntec Tower One, Singapore 038987.

2. RELATED APPEALS AND INTERFERENCES

No related appeals or interferences are pending. See appendix entitled RELATED PROCEEDINGS APPENDIX.

3. STATUS OF CLAIMS

Pending	:	Claims 1 to 15, 19, 20, and 26 to 28
Rejected	:	Claims 1 to 15, 19, and 20
Objected to	:	None
Allowed	:	None
Withdrawn	:	Claims 26 to 28
Cancelled	:	Claims 16 to 18, 21 to 25, and 29 to 31
Appealed	:	Claims 1 to 15, 19, and 20.

The appealed claims are listed in the appendix entitled CLAIMS APPENDIX.

4. STATUS OF AMENDMENTS

No claim amendments were filed subsequently to Final Rejection.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Claims 1 and 15 are both independent claims.

Claim 1 is directed to a method for transmitting to a remote node (5-Figure 1) in a data communications network, digital images from an image data source. A customer (10-Figure 1) is provided with a specific communication apparatus (2-Figure 1) having identifying information (step 100-Figure 2A) stored in a memory thereof (the last six lines of page 7 through the second line of page 8). One or more images are accessed and transferred (step 115-Figure 2A) from the image data source (1-Figure 1) to the communication apparatus (page 8, lines 3 to 5.). The closest entry point into the data communications network is determined (step 118-Figure 2A; page 8, lines 9-10). Information is automatically sent from the communications apparatus (2-Figure 1), via a toll free link, to the data communications network (page 11, lines 3 to 14). The data network automatically recognizes the location of the communication apparatus, compares the location to a stored list of network entry points, selects the closest entry point and transmits back to the communications apparatus the contact information for the selected closest entry point (page 11, lines 6 to 14). The communications apparatus automatically uses the provided contact information to establish communication with the data network via the closest entry point. The image or images and the identifying information are transmitted, through the closest entry point, to a remote node (5-Figure 1) of the data communications network (page 12, first full paragraph). The image or images and the identifying information are received at the remote node of the data communication network.

Claim 15 is directed to a communications apparatus (2-Figure 1) that includes:

means for accessing an image or images (step 310, Figure 4) from an image data source (1-Figure 1) (page 13, lines 9 to 11);

means for storing identifying information (230, 250-Figure 3) in a storage component of the apparatus (paragraph bridging pages 9 and 10);

means for automatically determining a closest entry point into the data communications network (processor 200-Figure 3) which includes:

means for automatically sending information (220-Figure 3) via a toll free link to the data communication network (page 11, lines 3 to 6);

means for automatically recognizing the location of the communication apparatus, comparing the location to a stored list of entry points, selecting the closest entry point and transmitting the contact information for the selected entry point to the apparatus (230, 240, 250 Figure 3; the paragraph bridging pages 11 and 12);

means for automatically using the provided contact information to establish communication, through the entry point, with a remote node (5-Figure 1; the first full paragraph of page 12); and

means for transmitting the image(s) and the identifying information to the remote node (page 12, first full paragraph).

As required under 35 U.S.C. § 41.37(c)(v), for each independent claim involved in the appeal (claims 1 and 15) and for each dependent claim argued separately (*none here*), appellants are required to identify every means plus function and step plus function and the structure, material, or acts described in the specification as corresponding to each claimed

function with reference to the specification by page and line number, and to the drawing, if any, by reference characters:

Claim	Means plus function or step plus function	Structure, material, or acts described in specification as corresponding to each claimed function	Citation in specification and drawings
15	means for accessing one image or a plurality of images from the image data source	<p>A storage device interface 210 or a digital acquisition device interface 215, along with the required driver software (not shown)</p> <p>One or both interfaces would be included in the communication center 2. The driver software would be stored in the storage device 250, such as flash memory, a disk drive, an EPROM or stored in RAM 240.</p> <p>The driver software could be installed during the assembly and setup of the communication center 2. Alternatively, the methods described in commonly assigned U.S. Application 09/653,597, can be used to upload driver software and application software (or an “applet”) to transfer the data from the image data source 1 to the communication center 2 or to the remote server 5.</p>	<p>Page 10, lines 9 to 22</p> <p>Figure 3-1, 2, 210, 215, 250</p>
15	means for storing identifying information in a storage component of said apparatus	<p>Unique identifying information is associated with each communication center 2. The identifying information is stored in ROM or EPROM 230 or in other storage devices 250, such as flash memory, in the communication center 2. Alternatively, the input/output port 260 provides means for receiving the identifying information. If the identifying information is loaded through the input/output port 260, it is stored in non-volatile storage 250 such as flash memory. Input/output port 260 can be a serial port, a USB port or other input/output ports well known in the state of the art. The writing to storage occurs under control of the processor 200 by means well known in the art. Other uses of means of receiving identifying information are well known in</p>	<p>Page 9, line 13 to page 10, line 8</p> <p>Figure 3-2, 200, 230, 250, 260</p>

Claim	Means plus function or step plus function	Structure, material, or acts described in specification as corresponding to each claimed function	Citation in specification and drawings
		the art (for example, setting information into cellular telephones). Identifying information can include an identifying number or address for the communications center as well as customer identifying information and information such as the date and time of transmission.	
15	means for automatically determining a closest entry point into the data communications network	In order to automatically determine the closest entry point into the data communications network 4, the processor 200 can initiate a call through the network connection control 220A and connection device (modem) 220B to a toll free number which has been previously established. At the location of the toll free number (not shown), a computer (also not shown) performs operations to recognize the location of the communication center 2 through caller ID, to locate the closest entry point into the data communications network 4 from comparison of the location of the communication center 2 and a stored list of locations of entry points into the data communications network 4, and to transmit back to the communication center 2 (through the connection device 220B) the contact information (phone number or network address, for example) of the closest entry point into the data communications network 4. In the configuration where the data communications network 4 is the Internet, the toll free telephone service would, in one embodiment, be provided by a national ISP service (AOL or ATT.net, for example). Alternatively, a GPS receiver and control module 225 could be used to ascertain the location of the communication center 2. Comparing the location of the communication center 2 as determined from the GPS receiver to a stored list of locations of entry points into the data communications network	Page 11, line 3 to page 12, line 4 Figure 3-4, 200, 220A, 220B

Claim	Means plus function or step plus function	Structure, material, or acts described in specification as corresponding to each claimed function	Citation in specification and drawings
		(not shown) will provide the contact information (phone number or network address, for example) of the closest entry point into the data communications network 4. (The list of locations of entry points into the data communications network could be stored in ROM or EPROM 230 or in other storage 250 such as a flash memory.) Other means for automatically determining the closest entry point into the data communications network 4, in addition to the ones described above, include comparing the location of the communication center 2 to a stored list of locations of entry points into the data communications network when the location of the communication center is known or accessing a preset (in ROM, EPROM or flash memory) contact information of the closest entry point into the data communications network when the location of the communication center is known. The computer code for managing and implementing the process of receiving data comprising the contact information for the closest entry point into the data communications network resides in either the ROM or EPROM 230 or the RAM 240 or other storage 250 such as a flash memory.	
15	means for automatically sending information from said communication apparatus, via a toll free link, to the data communication network to ascertain the location of said communication apparatus	A network connection control and connection device module 220 implements means for transferring information to a network. The preferred embodiment of a connection device is a modem (including wireless modem). However, other possible devices are an Ethernet adapter, a router, a hub, an infrared link or any wireless connection, depending on the network used and the mode of communicating to the network. The network connection control interfaces between connection device (such as the modem) and the processor 200.	Page 10, line 23 to page 11, line 1 Figure 3-200, 220
15	at the data network,	At the location of the toll free number (not	Page 11, lines 6

Claim	Means plus function or step plus function	Structure, material, or acts described in specification as corresponding to each claimed function	Citation in specification and drawings
	means for automatically recognizing the location of said communication apparatus, comparing the location to a stored list of network entry points and selecting the closest entry point, and transmitting back to said communication apparatus the contact information for the selected closest entry point	shown), a computer (also not shown) performs operations to recognize the location of the communication center 2 through caller ID, to locate the closest entry point into the data communications network 4 from comparison of the location of the communication center 2 and a stored list of locations of entry points into the data communications network 4, and to transmit back to the communication center 2 (through the connection device 220B) the contact information (phone number or network address, for example) of the closest entry point into the data communications network 4.	to 24 Figure 3-2, 4, 220B
15	at said communication apparatus, means for automatically using the provided contact information to establish communication with the data network via the closest entry point	Upon automatically determining the closest entry point into the data communications network 4, the image or plurality of images and the identifying information are transmitted to a remote node of the network through the entry point by means of the network connection device 220B under control of the processor 200. The computer code for establishing communication with the closest entry point into the data communications network and transferring the images and identifying information resides in either the ROM or EPROM 230 or the RAM 240 or other storage 250 such as a flash memory.	Page 12, lines 7 to 14 Figure 3-2, 4, 200, 220B, 230, 240, 250
15	means for transmitting the image or plurality of images and the identifying information, through the entry point, to a remote node of the network	Upon automatically determining the closest entry point into the data communications network 4, the image or plurality of images and the identifying information are transmitted to a remote node of the network through the entry point by means of the network connection device 220B under control of the processor 200. The computer code for establishing communication with the closest entry point into the data communications network and transferring	Page 12, lines 7 to 15 Figure 3-2, 4, 200, 220B, 230, 240, 250

Claim	Means plus function or step plus function	Structure, material, or acts described in specification as corresponding to each claimed function	Citation in specification and drawings
		the images and identifying information resides in either the ROM or EPROM 230 or the RAM 240 or other storage 250 such as a flash memory. The method for establishing communication between a computer and a point in a network is known to those skilled in the art.	

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- I. Whether claims 1 to 5, 7 to 15, 19 and 20 are obvious under 35 U.S.C. § 103(a) over WO 00/01138 (“Steinberg”) in view of US-B1-6,795,852 (“Kleinrock”).
- II. Whether claim 6 is obvious under 35 USC § 103(a) over Steinberg and Kleinrock and further in view of US-A-5,995,239 (“Kagawa”).

7. ARGUMENT

Rejection of Claims 1 to 5, 7 to 15, 19 and 20 under 35 U.S.C. § 103(a)

Appellants’ invention provides an apparatus and method that enables the users of digital image acquisition devices to obtain hard copy output from or to share the digital images by transmitting the images to a remote node of a communication network through an automatically determined closest entry point. The method of appellants recited in claim 1 requires the recited steps including the step of automatically determining a closest entry point into the data communications network including the steps of

automatically sending information from said communication apparatus, via a toll free link, to the data communication network to ascertain the location of said communication apparatus;

at the data network, automatically recognizing the location of said communication apparatus, comparing the location to a stored list of network entry points and selecting the closest entry point, and transmitting back to said communication apparatus the contact information for the selected closest entry point; and

at said communication apparatus, automatically using the provided contact information to establish communication with the data network via the closest entry point;

The automatic determination of the closest entry point in the present invention involves automatically sending information over a toll free link to the server to ascertain the location of the communication apparatus, at the network, automatically recognizing the location, comparing the location to list of network entry points, selecting the closet entry point and sending the contact information back to the communication apparatus which automatically uses the contact information to establish communication with the data network via the closest entry point.

Independent apparatus claim 15 includes means for carrying out such functions.

In support of the rejection, the Office asserts that Steinberg discloses all of the claimed steps or elements except it "... does not specifically teach automatically determining a closest entry point into the data communications network." Thus, it is acknowledged that Steinberg does not teach or suggest a critical element of the claimed method and apparatus of appellants.

The Office relies on Kleinrock to provide the teaching which is missing in the primary reference. At page 3 of the Office Action it is stated that

Nevertheless it is well known in the art at the time of the invention to automatically determine the closest entry point into a data communication network, as evidenced by Kleinrock. In an analogous art, Kleinrock disclosed an automatic network connection system which...

Reference is made to the disclosure at column 4, lines 23 to 32.

The Office concludes that

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the automatic connection system disclosed by Kleinrock, within Steinberg's system so users can be automatically connected to the most appropriate phone number and thereby avoid enormous long distance telephone charges (Kleinrock, column 1, lines 25 - 33).

Appellants submit that this conclusion is based on an improper combination of the prior art references.

In order to properly support a rejection under Section 103 the reference(s) must place the claimed subject matter in the possession of the general public. The reference(s) must provide some teaching or suggestion which would enable those skilled in the art, in conjunction with their knowledge of the state of the art, to know of the claimed invention. Here the references do not provide such a teaching or suggestion.

Kleinrock teaches a method wherein a user calls one telephone number from a computer communication connection and the call goes into a computer having a database of the access numbers of many service providers. The receiving computer identifies where the

user is calling from via an identifying feature and then determines the most appropriate, for example, the cheapest or most proximal number the user should use to connect to the Internet including the cost of the phone call and of the service provided by the service providers.

The method of Kleinrock is remote from that of appellants and also from that of Steinberg. In essence, this reference provides a method for connecting a user to a computer information network via a computer network. Kleinrock does not anywhere suggest anything with respect to an apparatus and method that enables the users of digital image acquisition devices to obtain hard copy output from or to share the digital images by transmitting the images to a remote node of a communication network through an automatically determined closest entry point.

Since the methods of the references are remote from each other, there is no suggestion to be found in either reference to combine their teachings in the manner described in the Office Action to support the rejection. It is acknowledged that Steinberg does not suggest a critical feature of appellants' claimed invention. Kleinrock does not suggest automatic determination of the closest entry point within the context of appellants' claimed method and system.

For all the foregoing reasons, the combination of Steinberg and Kleinrock does not support the rejection of claims 1 to 5, 7 to 15, 19, and 20 under 35 U.S.C. §103(a). The Office has failed to sustain the burden of showing that the claimed subject matter is unpatentable.

Rejection of Claim 6 under 35 U.S.C. § 103(a)

Claim 6 has been rejected as being unpatentable under 35 USC § 103(a) over Steinberg and Kleinrock and further in view of Kagawa.

Claim 6 is dependent upon claim 1 and recites the embodiment wherein the transmission of the image or plurality of images from the apparatus to the remote node of the communication network includes recited steps (A) - (G).

Claim 6 is patentably distinguishable over these references for the same reasons discussed above with respect to Steinberg and Kleinrock and further because Kagawa does not teach or suggest critical features of appellants' claimed subject matter including the step of automatically determining a closest entry point into the data communications network. In support of this ground of rejection the Office states (see the first paragraph on page 5) that

...Steinberg does not specifically recite the plurality of transmission rates of data images between the system and the remote node. However, Kagawa teaches that when data is transmitted successfully the system increases the transmission rate to increase the mean transmission rate.

The Office (see page 5) concludes that:

[It] would have been obvious to one of ordinary skill in the art to be motivated to introduce an alternative or obvious modification of Kagawa teachings to enhance the communication rate and reliability of data transmission as disclosed in col. 12, lines 14 - 16.

Appellants' submit that this conclusion is not justified based on the disclosures of the references. Steinberg and Kleinrock have been discussed in detail above. Kagawa discloses

a facsimile apparatus for sending and receiving image data. The disclosure of Kagawa is remote from appellants' claimed subject matter and does not provide any suggestion, individually or in combination with the other references, that would teach appellants' claimed subject matter according to the requirements of 35 U.S.C. § 103(a).

In addition, there is no justification for taking from Kagawa only a specific teaching out of the context of the overall disclosure of the reference and combining that specific teaching with the other references. Doing so represents impermissible reconstruction of the prior art.

Therefore the combination of Steinberg, Kleinrock, and Kagawa does not teach the subject matter of claim 6 within the meaning of 35 U.S.C. § 103.

Conclusions

Appellants request that this patent application be remanded to the Patent Office with an instruction to withdraw the rejections of the claims under 35 U.S.C. § 103(a), and allow the appealed claims.

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Respectfully submitted,

Date: **August 28, 2007**

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CLAIMS APPENDIX

The following claims are involved in the present appeal:

1. A method of transmitting to a remote node in a data communications network, digital images from an image data source, comprising the steps of:
 - providing the customer a specific communication apparatus, said communication apparatus having identifying information stored in a memory thereof; and
 - accessing and transferring one image or a plurality of images from the image data source to said communication apparatus;
 - automatically determining a closest entry point into the data communications network including the steps of:
 - (a) automatically sending information from said communication apparatus, via a toll free link, to the data communication network to ascertain the location of said communication apparatus;
 - (b) at the data network, automatically recognizing the location of said communication apparatus, comparing the location to a stored list of network entry points and selecting the closest entry point, and transmitting back to said communication apparatus the contact information for the selected closest entry point; and
 - (c) at said communication apparatus, automatically using the provided contact information to establish communication with the data network via the closest entry point;

transmitting said image or plurality of images and said identifying information, through the closest entry point, to a remote node of the data communications network; and

receiving, at the remote node of the data communication network, said image or plurality of images and said identifying information.

2. The method of claim 1 wherein the identifying information is preset in the memory in the apparatus.
3. The method of claim 1 wherein in automatically determining said entry point GPS information is used.
4. The method of claim 2 wherein in automatically determining said entry point caller ID information is used.
5. The method of claim 1 wherein the communication network is the Internet, the closest entry point is an Internet Service Provider (ISP) and the remote node is a server.
6. The method of claim 1 wherein the transmission of the image or plurality of images from the apparatus to the remote node of the communication network comprises the steps of:

constructing from each image at least one of a plurality of packets of information wherein the image is comprised of the totality of packets;

transmitting a packet at a given data rate;

determining whether the transmission was successful; and

performing the following steps, if the transmission is successful:

increasing the data rate,

determining if the data rate exceeds a select maximum data rate;

setting the data rate to the maximum data rate, if the data rate exceeds the select maximum data rate;

(E) decreasing the data rate, if the transmission was not successful, until successful transmission is achieved;

(F) transmitting a next packet; and

(G) repeating steps (B) through (F) until the totality of packets is transmitted.

7. The method of claim 1 wherein the transmission of the image or plurality of images from the apparatus to the remote node of the communication network further comprises the steps of:

detecting an interrupting signal; and interrupting the transmission upon positive detection of the interrupting signal; and

re-attempting transmission after a waiting period following an interruption.

8. The method of claim 7 wherein the transmission of the image or plurality of images from the apparatus to the remote node of the communication network further comprises the steps of:

receiving synchronizing information from the remote node, at the initiation of a transmission event;

synchronizing the transmission event with the information received at the remote node.

9. The method of claim 1 further comprising the steps of:
rendering the least one of said images in hardcopy form at a remote node of the data communications network.
10. The method of claim 1 further comprising the steps of:
rendering the least one of said images in digital form at the remote node of the data communications network.
11. The method of claim 1 further comprising the step of:
storing said image or plurality of images at a remote node of the data communications network.
12. The method of claim 1 further comprising the steps of:
sharing said image or plurality of images, in at least one of a plurality of image product forms, with at least one of a plurality of recipients.
13. The method of claim 1 wherein the identifying information is received at the apparatus and stored in the memory in the apparatus.
14. The method of claim 1 further comprising the step of:

entering image data items into a data structure in a memory at a remote node of the data communications network.

15. A communications apparatus enabling the transmission to a remote node in a data communications network, of digital images from an image data source and of identifying information, said communications apparatus comprising:

means for accessing one image or a plurality of images from the image data source;

means for storing identifying information in a storage component of said apparatus;

means for automatically determining a closest entry point into the data communications network comprising;

means for automatically sending information from said communication apparatus, via a toll free link, to the data communication network to ascertain the location of said communication apparatus;

at the data network, means for automatically recognizing the location of said communication apparatus, comparing the location to a stored list of network entry points and selecting the closest entry point, and transmitting back to said communication apparatus the contact information for the selected closest entry point; and

at said communication apparatus, means for automatically using the provided contact information to establish communication with the data network via the closest entry point; and

means for transmitting the image or plurality of images and the identifying information, through the entry point, to a remote node of the network.

19. The apparatus of claim 15 wherein said means for automatically determining the closest entry point into the data communications network comprise a GPS receiver.
20. The apparatus of claim 15 wherein said means for automatically determining the closest entry point into the data communications network utilize caller ID information.

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EVIDENCE APPENDIX

No additional evidence is submitted in the Evidence Appendix.

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RELATED PROCEEDINGS APPENDIX

No related appeals or interferences are pending.